

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-608

August 25, 1998

PUBLIC UTILITIES COMMISSION
Licensing Requirements,
Enforcement and Consumer Protection
Provisions for Competitive Electric
Providers (Chapter 305)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT, Commissioner

I. INTRODUCTION

In this Notice, we initiate a rulemaking to establish licensing requirements, annual reporting, enforcement provisions, and consumer protection standards relating to the competitive provision of generation services.

During its 1997 session, the Legislature fundamentally altered the electric industry in Maine by deregulating electric generation services and allowing for retail competition beginning on March 1, 2000.¹ At that time, Maine's electricity consumers will be able to choose a generation provider from a competitive market.

The Legislature recognized that it was allowing for customer choice in an industry historically characterized by the monopoly provision of service. As such, consumers have had no previous experience in purchasing electricity services within a competitive market. For this reason, the Legislature enacted specific provisions governing competitive provider licensing and consumer protection to encourage effective competition, promote an orderly transition and protect consumers from fraud and other unfair or deceptive business practices.

II. STATUTORY PROVISIONS

The licensing and consumer protection provision are contained in section 3203 of Title 35-A. Subsections 3203(1) and (2) require the Commission to license competitive providers and generally establishes information that must be provided by a license applicant. Subsection 3203(2) also requires the Commission to consider the need for a bond as evidence of the financial capability to provide service. Subsections 3203(4),

¹An Act to Restructure the State's Electric Industry (the Act), P.L. 1997, ch. 316 (codified as chapter 32 of Title 35-A M.R.S.A. §§ 3201-3217)

(6) and (8) establish general consumer protection standards for customers with a demand of 100 kW or less, and require the Commission to promulgate and enforce consumer protection rules and resolve customer disputes regarding those rules. Subsection 3203(15) directs the Commission to consider requiring standardized information on bills for competitive generation service.

Subsections 3203(5), (7), (10), (11), (12) and (13) direct the Commission to enforce the provisions of section 3203. The Legislature explicitly authorized the Commission to make use of a variety of options in fulfilling its enforcement responsibilities. These are: license revocation, imposition of monetary penalties, issuance of cease and desist orders, ordering restitution, taking court action, and notifying the Attorney General.

The Legislature also generally authorized the Commission to impose by rule other requirements necessary to carry out the purposes of the Act. 35-A M.R.S.A. § 3203(9).

Pursuant to 35-A M.R.S.A. § 3203(17), the rules established in this proceeding are routine technical rules.²

III. THE INQUIRY PROCEEDING

We have conducted an Inquiry in Docket No. 97-590 into the issues that would be presented in this rulemaking. We received comments from Central Maine Power Company (CMP); Bangor Hydro-Electric Company (BHE); Maine Public Service Company (MPS); the Public Advocate on behalf of the Maine Electric Consumers Coalition (MECC); the Renewable Energy Assistance Project (REAP); Enron Energy Services (Enron); FPL Energy Maine, Inc. (FPL); Weil and Howe, Inc. (W&H); the Towns of Yarmouth, Saco and Sanford and Cumberland County (the Towns); NorAm Energy Management, Inc. and Electric Clearinghouse, Inc. (NorAm/ECI); and Hydro Quebec (HQ). The comments we received were constructive; we note that many of the suggestions presented during the Inquiry reflect consensus on several topics and are incorporated in the proposed rule.

IV. GENERAL CONSIDERATIONS

In developing the proposed rule, we have been guided by the statutory provisions in Section 3203, the comments received in

²Subsection 3203(3) requires the Commission to adopt rules governing competitive provider information disclosure and informational filings. The subsection specifies that such rules are major substantive rules. The Commission will promulgate these rules in a separate rulemaking proceeding.

our Inquiry and the licensing and consumer protection rules adopted by California³, Massachusetts⁴ and Pennsylvania⁵. All three states have adopted specific rules that reflect their statutory directives, but the policy discussion by these Commissions have been useful and helped guide our efforts to develop the proposed rule. In particular, we have relied where possible on the approach adopted by the Massachusetts Department of Telecommunications and Energy (DTE) so as to promote a uniform set of procedures and rules for providers who seek to operate throughout the New England market. Such an approach should help reduce the cost of providing service in the State and encourage providers to enter the Maine market.

One of the most significant issues raised in the Inquiry related to the scope of the licensing provisions of the Act and the jurisdictional reach of the term "competitive electricity provider." Most commenters emphasized the need to allow consumer and government organizations to participate in electric competition without the requirement of a license. However, FPL noted that the rule should not open the door to "fiscally irresponsible power marketers to evade the licensing and consumer protection provisions" MECC recommended a two-tiered licensing requirement: a full level of licensing for marketers, aggregators, and competitive providers that take title to electricity and a minimum level for broker and aggregators that do not take title. W&H and the Towns sought to distinguish between an aggregator that works as an agent of the consumer client and one who may take title to electricity for sale to others. REAP also emphasized the necessity of allowing consumers to come together and organize for the purpose of purchasing electricity without being licensed, but emphasized that "a selling entity should not be able to avoid the licensing requirement simply by obtaining the authorization of individual consumers to act on their behalf." REAP suggests that the entity must be consumer-owned or consumer-controlled to avoid the licensing requirement. MPS proposed that an agent or entity that "purchases at retail" on behalf of its members should be exempt. On the other hand, CMP recommended that an "aggregator" should be

³California Public Utilities Commission, Opinion Regarding Consumer Protection, D. 98-03-072, March 26, 1998.

⁴Massachusetts Department of Telecommunications and Energy, Rules Governing the Restructuring of the Electric Industry(220 CMR 11.00), DPU/DTE 96-100, February 20, 1998.

⁵Pennsylvania Public Utilities Commission, Re: Licensing Requirements for Electric Generation Suppliers, 52 Pa. Code, Chapter 54 and § 3.551, Final Rulemaking Order, Docket No. L-00970129, April 24, 1998.

considered a "broker" and subject to licensing if the aggregator has a contract with a client to facilitate the selection of a supplier. Similarly, if a community organization or affinity group has a contractual relationship with its members to act on their behalf to select a supplier, the organization should be licensed. If the organization merely provides a forum for its members to select a supplier, no licensing should be required. BHE pointed out that if a municipality received remuneration from a supplier for every resident that selects the supplier, the municipality should be licensed.

The Pennsylvania licensing rules require aggregators, brokers and marketers to be licensed if they act as an intermediary for sale to retail customers regardless of whether they take title to the electricity. Pursuant to the Pennsylvania statute, licensing is triggered if any of these entities engage in marketing (defined to include brand name advertising), offer to provide, or provide retail electricity. The recent California licensing order exempts public agencies and publicly-owned electric utilities selling within their own jurisdiction. The licensing rule applies to any entity "offering electrical service to residential and small commercial customers" Massachusetts licenses "competitive suppliers" (generation companies and aggregators that produce, purchase or otherwise take title to electricity and sell to retail customers), and "electricity brokers" (entities, including aggregators, that facilitate or otherwise arrange the purchase and sale of electricity, but do not produce, purchase or otherwise take title).

Upon consideration of the comments, actions in other states, and the language in the Act, we propose an approach similar to that adopted in Massachusetts. The Act requires all "competitive electricity providers" to be licensed by the Commission, 35-A M.R.S.A. § 3203(1) and (2), and defines competitive electricity providers to include "marketers," "brokers," and "aggregators," 35-A M.R.S.A. § 3201(5). The definitions of broker and aggregator, 35-A M.R.S.A. § 3203(3) and (4), clearly contemplate that the licensing requirement would apply beyond entities that have title to electricity that is sold to retail customers, and would include certain entities that arrange for or facilitate the purchase of electricity.

Accordingly, the proposed rule requires brokers and aggregators (as those entities are defined by the Act), as well as marketers and other competitive providers that have title to electricity and sell it at retail to be licensed by the Commission. However, in recognizing that brokers and aggregators do not directly sell electricity to consumers, but simply facilitate such sales, the proposed rule specifies that certain

of the licensing requirements do not apply to brokers and aggregators. We note that an entity whose activity is within the definition of a broker or aggregator, but also acts as marketer or seller of electricity is subject to all of the licensing requirements.

The proposed rule, thus, incorporates what is in essence a 2-tier approach to licensing that subjects brokers and aggregators to licensing requirements that are less stringent than for other competitive providers. As such, the proposed rule is similar to the Massachusetts rule. We have not, however, included an exemption for some category of governmental or non-profit entities as suggested by several commenters. Although such an exemption may be desirable, the statute does not provide for any exemption from the licensing requirements.

V. DISCUSSION OF INDIVIDUAL SECTIONS

A. Section 1: General Provisions and Definitions

Section 1(A) states the general scope of the rule. The rule is applicable to competitive electricity providers. This term includes marketers, brokers, aggregators or other entities selling electricity at retail.

Section 1(B) contains definitions of terms used throughout the rule. The definitions contained in the subsection are self-explanatory. Many of the definitions are in the Act and are included in the proposed rule for the convenience of the reader. We have modified the statutory definition of "aggregator" to make it clear that an entity who engages in the direct sale of electricity is not subject to the exemptions applicable to aggregators.

B. Section 2: Licensing Requirements and Applicability

Section 2(A): Entities Subject to Licensing Requirements

Section 2(A)(1) requires all competitive providers, including aggregators and brokers, to obtain a license from the Commission before providing retail service in Maine. As discussed above, however, many of the licensing requirements do not apply to aggregators and brokers.

Section 2(A)(2) clarifies that transmission and distribution (T&D) utilities that arrange for standard offer service are not subject to the licensing requirements.

Section 2(B): Application Requirements for Competitive Providers

Section 2(B)(1) contains the requirements for an applicant's showing of financial capability, as required by 35-A M.R.S.A. § 3203(2)(A), and requires that each competitive provider furnish a bond or other security approved by the Commission. The Commission is authorized by 35-A M.R.S.A. § 3203(2) to require a bond or other evidence of the provider's "ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service." Several commenters recommended that providers, other than those with an investment grade bond rating, should provide a bond or cash escrow. We agree with this general approach and have incorporated it in the proposed rule.

The proposed rule contains an initial security level of \$250,000, with a provision for modification of this amount based on future revenues for the sale of generation services at retail in Maine. After the first year, the security level of each licensee will be adjusted to reflect an amount equal to 10% of the entity's reported annual revenue for sales to customers of 100 kW or less (revenue for this purpose does not include that from standard offer service). We have limited the security level to revenue associated with smaller customer loads because these are the customers that the security requirements (as well as our other customer protection provisions) are intended to protect. Alternatives to a bond are set forth for those entities with sufficient financial capacity; these alternatives are intended to perform the same function as a bond.

The proposed rule sets forth the reasons for which the bond proceeds may be ordered paid and the minimum provisions that must be part of any bond or equivalent security. The presence of a bond or equivalent security will allow the Commission to protect customer deposits or advanced payments, ensure payment of fines or restitution ordered by the Commission pursuant to any formal enforcement action, and reimburse standard offer providers for excess costs that they may incur as a result of the default or failure to serve by a competitive provider.

Finally, this paragraph specifies that an aggregator or broker is not required to post a bond or security instrument, but should include other available evidence of its financial capability as part of its license application.

Section 2(B)(2) establishes the requirements for an applicant's showing of technical capability, as required by 35-A M.R.S.A. § 3203(2(B)). The section specifies that an applicant demonstrate its ability to enter into any necessary contract with T&D utilities. For example, an owner of a generation facility may be required to execute an interconnection agreement and competitive providers responsible for retail load may be obligated to enter a "standard contract" with utilities.⁶ If such a contract or agreement is not yet finalized, the license may be issued contingent on the Commission's receipt of such contract or agreement within a certain time period. It would be inappropriate for providers to promote their products or services to Maine consumers before they have demonstrated their ability to deliver their product or services through the local T&D utility. This section also requires applicants to demonstrate their ability to deliver electricity through compliance with all applicable NEPOOL and ISO-NE rules, and by being a NEPOOL participant or having a contract with such a participant. Applicants to serve Northern Maine must demonstrate compliance with all applicable rules of the Maritimes Control area. The specific provisions of the paragraph do not apply to aggregators and brokers, but these entities must submit information that otherwise demonstrates their technical fitness to conduct the proposed business.

Section 2(B)(3), as required by 35-A M.R.S.A. § 3203(2)(C), requires applicants to disclose information about enforcement proceedings and customer complaint information relating to the applicant. The required information is limited to those enforcement actions or customer complaints concerning the sale of electricity, business fraud, or unfair or deceptive trade practice. The applicant is required to submit customer complaint data that is available from other state licensing agencies, state Attorney General offices, or other governmental consumer protection agencies.

Section 2(B)(4), as required by 35-A M.R.S.A. § 3203(2)(D), provides that an applicant must submit evidence of its ability to satisfy the renewable resource portfolio requirement under 35-A M.R.S.A. § 3210, consistent with the Commission's portfolio requirement rule, Chapter 311. The provision is not applicable to brokers and aggregators.

Section 2(B)(5), as required by 35-A M.R.S.A. § 3203(2)(E), requires the applicant to identify its affiliates. The proposed rule specifies that the requirement applies only to affiliates operating in the United States. It is expected that

⁶The need for and terms of such "standard contracts" are being examined in other Commission proceedings.

this information is readily available in an organization's annual report.

Section 2(B)(6) requires an applicant to file evidence of its ability to comply with all applicable Commission rules.

Section 2(B)(7) lists other general information that must be included in a licensee application; most commenters agreed that this information is appropriate to consider in the licensing process.

Section 2(C): Licensing Procedures

Section 2(C)(1) states the scope of the licensing procedures as applying to all competitive electricity providers. section 2(C)(2) requires the use of a Commission application form. Section 2(C)(3) establishes the number of copies of the application that must be filed and the entities that must be provided copies. Section 2(C)(4) sets forth the licensee's ongoing obligation to inform the Commission of any material change in the licensee's status or operation while the licensee is operating in Maine. Section 2(C)(5) requires the applicant to submit a filing fee with its application. The filing fee is intended to cover the Commission's routine administrative costs to process and issue the license, and to encourage requests for licenses from serious applicants.

Section (2)(C)(6) and (7) establish the procedure for notice and review of the license application and an opportunity to protest the license. Under the proposed rule, the Commission is not required to publish notice of the application for a license in the newspaper,⁷ but will provide a 20-day comment period to any interested person. Any protest to a license application must provide specific facts that call into question the applicant's financial or technical fitness, or its ability to conduct its proposed business in conformance with the minimum consumer protection requirements or other applicable Maine laws. The Commission will review a license application within 60 days to determine if it should be approved, rejected or subjected to further investigation. Section 2(C)(8) states a license will be granted upon compliance with all applicable licensing requirements. Section 2(C)(9) specifies that a license remains valid until revoked or abandoned. Our current view is that there is not a need for a term for licenses (as authorized by 35-A M.R.S.A. § 3203(5)) with the attendant renewal requirements.

⁷Maine's Administrative Procedures Act, Subchapter V, Licensing, 5 M.R.S.A. §§ 10001-10005, does not require publication of license applications and requires a hearing only if otherwise required by constitutional right or statute.

However, comments from interested persons would be welcome on this proposal.

Section 2(C)(10) provides that licenses cannot be transferred without prior Commission approval. Section (2)(C)11) also prohibits a licensee from abandoning service without adequate notice. Finally, section 2(C)(12) refers to the penalty provisions that will apply to any applicant that knowingly submits false, misleading, incomplete or inaccurate information on its license application.

Section 2(D): Annual Reporting

This section contains the requirement for the annual reporting of information. There are several purposes for requiring the specified information including the monitoring of how the generation services market is operating, the modification of the financial security requirement, tracking compliance with consumer laws and regulations, and ensuring compliance with Commission rules. The subsection requires information on average prices, revenues, customer complaints, and enforcement actions, as well as information disclosure and portfolio reporting requirement. The subsection specifies the reporting period to be a calendar year and authorizes the Commission to protect confidential material. The subsection also specifies that aggregators and brokers are not subject to the annual reporting requirements, except for customer complaints and enforcement actions but must provide additional information that the Commission may require.

C. Section 3: Sanctions and Enforcement

This section of the proposed rule contains the sanctions and enforcement mechanisms that the Commission may use to ensure competitive provider compliance with all applicable statutes and rules. As specifically authorized by the Legislature, 35-A M.R.S.A. § 3203, the proposed rule allows the Commission to impose the following sanctions: monetary penalties (up to \$5,000 per day for each violation); cease and desist orders; restitution; and license revocation. The section also provides that the Commission may impose any other legally authorized sanctions or waive sanctions upon a showing of good faith effort to comply. Finally, the section contains enforcement provisions allowing the Commission to take court action or notify the Attorney General of certain unlawful acts.

D. Section 4: Consumer Protection

Section 4(A): Applicability

Section 4(A)(1) specifies that all the consumer protection provisions of section 4 apply to service to residential and commercial customers with a demand of 100 kW or less. The Act contains a list of standard protections that must apply to customers of 100 kW or less, 35-A M.R.S.A. § 3204(4), and authorizes the Commission to adopt additional consumer protection rules, 35-A M.R.S.A. § 3203(6). Because larger use customers are likely to be more sophisticated purchasers of electricity, we see no reason to apply the customer protection rules to customers with demands beyond 100 kW. The section also defines the 100 kW criterion to mean customer maximum demand of 100 kW or less in any 10 months over the previous 12 months and requires utilities to cooperate in identifying such customers.

Section 4(A)(2) states that the consumer protection requirements do not apply to standard offer providers, unless otherwise indicated, because such providers do not actually market to customers.

Section 4(B): Provision of Information to Customers

Section 4(B) requires each competitive provider to prepare and distribute a document entitled "Terms of Service" to its customers within 30 days of initiating service. The document must be written in plain language and printed in legible type. The competitive provider must provide the terms of service document to: (1) each of its customers following the affirmative choice of the provider; (2) each of its customers on an annual basis; and (3) any customer upon request. The Commission views the terms of service document as the method by which customers are informed about the details of their contract with providers so that it must contain the "material" terms of the contractual relationship; the proposed rule contains a list of items that must be included in the terms of service document. In addition, the delivery of the terms of service document triggers the customer's 5-day right of rescission as required by 35-A M.R.S.A. § 3203(4)(C). While the statute requires the provider to provide these disclosures within 30 days of initiating service, our proposed rule links the provider's ability to notify the T&D utility of the customer's selection of a new provider with the provider's compliance with the issuance of the terms of service document and the expiration of the right of rescission.

The section also requires the providers to provide to customers, along with the terms of service document, a disclosure label that complies with the requirements of the Commission's information disclosure rule, Chapter 306.

Section 4(C): Right of Rescission

Section 4(C) governs the customer's right of rescission pursuant to 35-A M.R.S.A. § 3203(4)(C) and specifies how competitive providers must inform customers of this right and how it may be exercised. As mentioned above, the provider's ability to notify the T&D utility of the customer's selection of a provider is linked to the provision of this right of rescission in the terms of service document. To allow for the transmittal of the document to the customer in the mail and the customer's exercise of this right by mail, the provider must wait 11 calendar days after mailing the terms of service document prior to notifying the distribution utility of the customer's choice of provider. As required by 35-A M.R.S.A. § 3203(4)(C), the proposed rule is intended to provide customers with a 5 day period during which to rescind the choice of provider either orally or in writing. To enhance the customer's understanding of the right to rescind within a relatively short period of time from the mailing of the terms of service document, the subsection requires competitive providers to notify prospective customers of their rescission right at the time of orally agreeing to take service and in any written solicitations that are directly mailed to customers. Commissioner Nugent seeks comments on whether the rule should require the rescission right notice on written solicitations to be separate from any part of the materials that customers mail back to providers to accept service.

We are concerned that customers or providers may not want to wait 11 or more days after the customer chooses a new provider before the process of switching providers begins. We, therefore, ask for comments on an approach that would allow providers to notify the distribution utility of the customer's decision to switch and to begin the switching process before the expiration of the waiting period. Such an approach should not result in additional costs to customers who rescind their choice of provider or involve a customer waiver of the rescission right.

Section 4(D): Verification of Affirmative Customer Choice

Section 4(D) contains the provisions applicable to a customer's selection of a provider and responds to the need to prevent what is commonly referred to in the telephone industry as "slamming;" that is, the change of a competitive provider without the customer's authorization. The general approach of the

proposed rule is based on the assumption that the customer's contractual relationship with a provider must result from a contact between the customer and the provider and that the provider must maintain sufficient evidence to establish the customer's authorization.

The proposed rule allows such authorization to be demonstrated by written signature of the customer, or oral verification by an independent third party. In keeping with the experience in the telecommunications industry where slamming has become the major cause of customer complaints, a customer's authorization cannot be obtained on the same document as a check, prize or other document which intends to confer a benefit on the customer for choosing a specific provider. Our proposed rule matches that recently adopted in Massachusetts for electric competition and, therefore, promotes a uniform system of verifying customer authorization that should reduce the burden of compliance for New England-wide energy providers.

The proposed rule also contains a detailed description of how customer complaints concerning unauthorized switching will be handled and sets forth the stringent standard that customers, who have in fact been determined to have been switched without proper authorization, will not owe any charges to the provider who violates these rules. The stated minimum sanctions are designed to make it clear that the Commission will not tolerate slamming and will take swift steps to halt the practice. There will be no grace period or leniency with respect to our response to any incidents of this outrageous practice.

Section 4(E): Minimum Service Period

Section 4(E) contains the statutory requirement, 35-A M.R.S.A. § 3203(4)(B), that providers must offer at least a 30-day minimum contract term to customers.

Section 4(F): Notice of Changes in Material Terms and Conditions; Contract Renewal

Section 4(F) requires competitive providers to give their customers between 30 and 60 days notice of a change in the material terms of their contract, the existence of an automatic renewal provision contained in the contract, or the need for the customer to either renew or select another provider prior to the end of the contract term. The purpose of these provisions is to ensure that customers are aware of upcoming changes, renewal or end of the contract term in sufficient time to take steps to cancel, renew or select another provider. Whether a provider can change the terms of a contract with a customer during the contract period is a matter of contract. Our proposed rule is

intended to provide notice to customers at least 30 days prior to the onset of these key contractual events.

Section 4(G): Cancellation of Service

Section 4(G) implements the statutory provision, 35-A M.R.S.A. § 3203(4)(A), that competitive providers must provide at least a 30-day notice to a customer prior to contract termination. This notice period applies to generation services only, thus allowing a different notice period for other types of services. The notice of termination or cancellation must be provided to the customer in writing and must be issued in a separate envelope from the customer's bill. While providers may include late payment notices in or with a customer's bill, the provider's notice to the customer that the contract will be canceled (thereby forcing the customer to either "cure" the defect in their current contract, seek another provider, or default to the standard offer) should be sent in such a way to assure that the customer has been notified and understands the potential results of the continued default. The proposed rule contains the minimum contents of such a notice. The proposed rule is intended to be implemented in conjunction with the statutory prohibition imposed on T&D utilities that a customer's distribution service cannot be disconnected (or threatened to be disconnected) for the failure to pay unregulated generation service charges. 35-A M.R.S.A. § 3203(14). The subsection specifies that a competitive provider may not avoid the requirement for providing a 30-day notice of termination by installing a pre-payment meter or device which automatically disconnects the customer's electricity if the customer fails to pay in advance (usually by a "smart card" sold by the provider).⁸ Finally, the subsection specifies that a customer who has had service canceled and does not choose another competitive provider will default to the standard offer.

Section 4(H): Generation Service Bills

This section contains the minimum information and format requirements for bills for generation service, including standard offer service. The requirements are applicable to bills issued for generation services by T&D utilities on behalf of providers. The minimum contents of a bill reflect the need for itemized and unbundled generation service, as well as a calculation of the customer's actual cents per kWh charged for the volume of kWhs consumed by the customer for the current

⁸We note that competitive electricity providers do not have the authority to actually stop the flow of electricity to customers. T&D utilities are the only entities that may physically disconnect electricity service and such disconnections must occur pursuant to Commission rules.

billing period. This calculation will allow the customer to understand the effect of the provider's price structure on his or her own usage pattern and compare that price structure with those of other providers. The requirements of this subsection are consistent with the statutory directive that the Commission consider requiring standard bill information. 35-A M.R.S.A. § 3203(15).

Section 4(I): Do-Not-Call List

Section 4(I) implements the statutory requirement for a "do-not-call" list. 35-A M.R.S.A. § 3203(4)(D). The Commission will maintain this list, but competitive providers must abide by its existence in their telemarketing efforts and notify customers of the existence of this list in their terms of service document.

Section 4(J): Protection of Customer Information

Section 4(J) governs with the release of customer-specific data. Similar to the rule adopted in Massachusetts, a competitive provider must obtain the customer's written authorization or oral verification by an independent third party to release customer-specific data, such as usage history, bill payment or collection history, except for release of such information for the purpose of collecting the customer's debt owed to the provider or to a credit reporting agency pursuant to the Federal Fair Credit Reporting Act. The proposed rule also allows a customer to obtain his or her usage history from a provider without charge at least once annually. The proposed rule does not address the procedures a T&D utility must follow to release customer-specific data to competitive providers; that issue will be addressed in another rulemaking proceeding.

Section 4(K): Unfair or Deceptive Practices

Section 4(K) specifies that the conduct and contracts of competitive providers are subject to the Maine or Federal Unfair Trade Practices Act. We intend to coordinate complaints of this type with the Attorney General and to take that Department's actions into account in our licensing and enforcement activities with respect to providers.

Section 4(L): Excessive Collection Costs

Section 4(L) prohibits contractual terms that impose excessive collection costs, such as those in excess of reasonable attorney fees or court costs. Preprinted customer contracts should not seek to impose provider-determined damages or other costs other than the typical early termination fees that may

apply to a customer who cancels a contract with a specific term. Our proposal in this regard is modeled on the Maine Consumer Credit Code, Title 9-A of Maine's statutes.

Section 4(M): Application for Service; Denial of Credit

Section 4(M) incorporates the standards of the Federal Equal Credit Opportunity Act⁹ in our customer protection rules. We believe that, by its terms, the federal ECOA will apply to competitive electricity providers. As such, it is appropriate to require, in our rules, that competitive electricity providers adhere to ECOA standards, and to make clear that a finding by an entity of competent jurisdiction that the standards have been violated is a basis for action by the Maine Commission against the licensee. Complaints of this nature will be closely coordinated with the Maine Department of Attorney General, who has primary jurisdiction over the Maine Unfair Trade Practices laws.

Section 4(N): Conducting Business with Unauthorized Entities

Section 4(N) imposes an obligation on providers to use the services of only licensed entities to facilitate or arrange for the sale of electricity to retail customers in this State. This provision is intended to help police the licensing applicability requirements of this Chapter.

Section 4(O): Dispute Resolution

Section 4(O) contains the Commission's dispute resolution procedures as required by 35-A M.R.S.A. § 3203(8) and establishes the competitive provider's obligation to attempt to resolve complaints and refer dissatisfied customers to the Commission for an informal complaint resolution procedure. The proposed rule is based on the minimum procedural provisions contained in the Commission's Chapter 810, Section 13. While retail customers may well choose providers based in part on their customer service programs and their response to customer calls and inquiries, our proposed rule establishes a minimum level of customer service for all providers. The proposed rule requires providers to accept customer complaints and disputes, investigate them, and report back to customers promptly with their proposed resolution. If a customer is dissatisfied with the provider's resolution, the provider must orally inform the customer of the right to file an informal appeal with the Commission's Consumer Assistance Division (CAD). As with Chapter 810, a customer may appeal a CAD resolution to the Commission.

⁹15 U.S.C. §§ 1691-1691f and Regulation B, 12 C.F.R. §§ 202-202.14.

E. Section 5: Waiver or Exemption

Section 5 contains the Commission's standard language for a waiver or exemption from the provisions of this Chapter that are not consistent with its purposes or those of Title 35-A.

F. Customer Waiver of Protections

Our current view is that the customer protection provisions of this Chapter, many of which are statutory, cannot be waived by customers. We seek comment on this point and on whether a specific provision on customer waivers should be added to the rule.

VI. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on September 23, 1998, in the Public Utilities Commission hearing room. Written comments on the proposed rule may be filed until October 5, 1998. However, the Commission requests that comments be filed by September 18, 1998 to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 98-608, and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Commission if you need special accommodations to make the hearing accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested persons to comment on the fiscal impact and all other implications of the proposed rule.

The Administrative Director shall send copies of this order and proposed rule to:

1. All electric utilities in the State;
2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

3. All persons on the Commission s list of persons who wish to receive notice of all electric restructuring proceedings;

4. All persons on the service list or who filed comments in the Inquiry, Public Utilities Commission, Inquiry into Standard Customer Protection Provisions and Licensing Requirements for Competitive Electric providers, Docket No. 97-590;

5. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

6. The Executive director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

Accordingly, we

O R D E R

1. That the Administrative director send copies of this Notice and attached proposed rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule.

2. That the Administrative Director send a copy of this Notice of Rulemaking to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, Maine this 25th day of August, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent